

SHANNON L. GUSTAFSON (SBN 228856)

[sgustafson@lynberg.com](mailto:sgustafson@lynberg.com)

AMY R. MARGOLIES (SBN 283471)

[amargolies@lynberg.com](mailto:amargolies@lynberg.com)

**LYNBERG & WATKINS**

A Professional Corporation

1100 W. Town & Country Road, Suite #1450

Orange, California 92868

(714) 937-1010 Telephone

(714) 937-1003 Facsimile

Attorneys for Defendants, COUNTY OF SAN BERNARDINO  
and BREANA FITE

**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

DEBORAH MOLLER., an individual  
and successor-in-interest of BRET  
BREUNIG, deceased;

Plaintiff,

v.

COUNTY OF SAN BERNARDINO, a  
public entity; UNIDENTIFIED  
DEPUTIES, individuals; CITY OF  
REDLANDS, a public entity;  
UNIDENTIFIED OFFICERS,  
individuals; LOMA LINDA  
UNIVERSITY MEDICAL CENTER, a  
non-profit corporation;  
UNIDENTIFIED HEALTH CARE  
PROFESSIONALS, individuals; and  
KENNETH BREUNIG, a nominal  
Defendant,

Defendants.

Case No.: 5:22-cv-01306-DSF-MAR

**JOINT EXHIBIT LIST FOR TRIAL AS  
TO COUNTY DEFENDANTS WITH  
OBJECTIONS AND PROFFER OF  
ADMISSIBILITY**

Action Filed: July 27, 2022  
Pretrial Conf.: July 22, 2024  
Trial Date: August 13, 2024

**TO THE COURT, THE PARTIES AND THEIR ATTORNEYS OF  
RECORD:**

As requested by the Court, the parties hereby submit the list of objected to exhibits with a proffer by the party as to why the exhibit is admissible.

No.	Description	Objection	Proffer of Admissibility or Stipulation
1	CAD Log LL212300024		<b>Stipulated As Not Admissible-</b> This exhibit is not admissible as both parties object to its admission into evidence.
2	CAD Log LL212300035	II- Hearsay, 403	Δ Proffer- Exception to Hearsay- FRE 802 (6)- Records of a Regularly Conducted activity. Entries were made by dispatcher and Fite at or near the time of incident, kept in regular course of business and Fite can testify to same. Fite does not have to have made all of the entries to testify as to how the record is created in the course of business.

			<p>Non Hearsay- Admissible to establish Fite's knowledge of information conveyed to her which informed her actions.</p> <p>403- Document is relevant as it sets forth why Fite was dispatched and what actions were taken during the call.</p> <p>II Response-This document is hearsay and inadmissible for the same reasons as Exhibits 1 and 3. While Defendant Fite can testify regarding this document, the document itself is inadmissible and not created by Defendant Fite which would allow it to be admissible.</p>
3	CAD Log LL212300035		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p>

1	4	Google Map—Cardinal Ct. aerial view		Stipulated- Admissible when witness provides context for exhibit.
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3				
4	5	Google Map—13249 San Timoteo Canyon Road street view	Δ- Lacks Foundation, Relevance, FRE 403	<p>Π Proffer-the photograph correctly depicts the location regardless of a view of a witness.</p> <p>Δ Response- Photograph is extremely misleading as it is taken form a view that no witness had.</p>
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12	6	Audio Belt Recording—Deputy Fite (audio file)		Stipulated- Admissible when witness provides context for exhibit.
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14				
15	7	Redlands Police Department Interview (audio file)		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p>
16				
17				
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19	8	Deputy Fite Internal Affairs Interview (audio file)		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p>
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21				
22				
23	9	Google Map—2128 Alessandro Road street view		Stipulated- Admissible when witness provides context for exhibit.
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10	Google Map—2129 Alessandro Road street view		Stipulated- Admissible when witness provides context for exhibit.
11	Google Map—2129 Alessandro Road forward street view		Stipulated- Admissible when witness provides context for exhibit.
12	Google Map—2129 Alessandro Road side street view		Stipulated- Admissible when witness provides context for exhibit.
13	Google Map—2129 Alessandro Road street view Marked	Δ- Lacks Foundation, Not Authenticate, Relevance, FRE 403	II Proffer-Defendant Fite annotated and authenticated this photograph in her deposition Δ Response- Improper annotation on exhibit that is not authenticated
14	Google Map—path of travel	Δ-Lacks Foundation, Not Authenticate, FRE 403 Hearsay	II Proffer- These facts are judicially noticeable as this accurately depicts the route and any issues of the drive time can be redacted.  Δ Response- Map does not set forth accurate route and also sets forth a drive time of 16 minutes without any support,

1			Drive time is a hearsay
2			statement with no exception.
3			Additionally, placement of the
4			drive time and total mileage is
5			misleading as it leaves
6			appearance that the drive time
7			and mileage from Redlands
8			Community Hospital and
9			Alessandro Road is 6.9 miles
10			and 16 minutes. Defendants do
11			not have an objection to
12			showing a map of the area but
13			the annotations are not proper.
14	15	Google Photo	Stipulated- Admissible when
15		(Deposition of Joseph	witness provides context for
16		Miller)	exhibit.
17	16	Loma Linda University	II- Hearsay
18		CAD Report	Δ Proffer- This document
19		(Deposition of Joseph	should be admissible in
20		Miller & Mary Matlean)	redacted form that only sets
21			forth the last entry which refers
22			to Loma Linda Security's
23			contact with Breunig on the
24			lawn.
25			Exception to Hearsay- FRE
26			802 (6)- Records of a
27			Regularly Conducted activity.

1			Entries were made by
2			dispatcher at or near the time of
3			incident, kept in regular course
4			of business and can be
5			authenticated through witness
6			Matlean or Miller
7			
8			Non Hearsay- information
9			obtained by Miller that led to
10			Fite arrival, may also be used
11			to refresh recollection of Miller
12			about nature of call if needed.
13			
14			II Response-This document is
15			hearsay and inadmissible for
16			the same reasons as Exhibits 1
17			and 3. Matlean and Miller did
18			not create this document and
19			therefore cannot authenticate it.
20			Miller using this document to
21			refresh his recollection does
22			not make the document
23			admissible.
24			
25	16A	Second Amended	<b>Stipulated As Not Admissible</b>
26		Deposition Notice of	- This exhibit is not admissible
27			

1		County 30(b)(6)		as both parties object to its
2		(Deposition of Frank		admission into evidence.
3		Hardin)		
4	17	Google Maps—		Stipulated- Admissible when
5		Anderson St. and		witness provides context for
6		Prospect Ave. aerial		exhibit.
7		view		
8	18	Google Maps—		Stipulated- Admissible when
9		Anderson St. and		witness provides context for
10		Prospect Ave. aerial		exhibit.
11		view marked		
12	19	LLUMC record 00048		<b>Stipulated As Not Admissible</b>
13				- This exhibit is not admissible
14				as both parties object to its
15				admission into evidence.
16	20	LLUMC record 00040		<b>Stipulated As Not Admissible</b>
17				- This exhibit is not admissible
18				as both parties object to its
19				admission into evidence.
20	21	Google Maps—11201		Stipulated- Admissible when
21		Anderson St. street view		witness provides context for
22				exhibit.
23	22	911 Call by Mary		<b>Stipulated As Not Admissible</b>
24		Matlean to Dispatch		- This exhibit is not admissible
25		(audio file) (Deposition		as both parties object to its
26		of Mary Matlean)		admission into evidence.
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2	22A	Deposition Notice of	<b>Stipulated As Not Admissible</b>
3		County 30(b)(6)	- This exhibit is not admissible
4		(Deposition of Shelby	as both parties object to its
5		Moore)	admission into evidence.
6	23	February 6, 2018	Δ Proffer- Exception to
7		County Booking Jacket	Hearsay- FRE 802 (6)-
8			Records of a Regularly
9			Conducted activity. Entries
10			were made at or near time of
11			booking for Mr. Breunig and
12			can be authenticated by
13			Custodian of Records at San
14			Bernardino if needed.
15			403- Defendants will likely
16			not seek to admit this exhibit in
17			whole or in part unless Ms.
18			Moller denies knowledge of
19			decedent's arrest history.
20			Defendants should be
21			permitted to use exhibit to
22			question Ms. Moller about her
23			knowledge of son's history as
24			it goes to quality of the
25			relationship that was lost.

1			Also drug history relevant and
2			relied upon by Defense
3			toxicology expert in evaluating
4			Breunig tolerance.
5			II Response- The document
6			itself is not admissible as it is
7			hearsay and violates 403.
8			However Ms. Moller testifies
9			about her son's history does
10			not make this document
11			admissible as only wrongful
12			death damages are at issue, not
13			survival damages of her son.
14			
15	24	February 6, 2018	II- Hearsay,
16		Booking (Inmate Status	Relevance,
17		Document)	FRE 403
18			Δ Proffer- Exception to
19			Hearsay- FRE 802 (6)-
20			Records of a Regularly
21			Conducted activity. Entries
22			were made at or near time of
23			booking for Mr. Breunig and
24			can be authenticated by
25			Custodian of Records at San
26			Bernardino if needed.
27			403- Defendants will likely
28			not seek to admit this exhibit in
			whole or in part unless Ms.

1			Moller denies knowledge of
2			decedent's arrest history.
3			Defendants should be
4			permitted to use exhibit to
5			question Ms. Moller about her
6			knowledge of son's history as
7			it goes to quality of the
8			relationship that was lost.
9			
10			II Response- The document
11			itself is not admissible as it is
12			hearsay and violates 403.
13			However Ms. Moller testifies
14			about her son's history does
15			not make this document
16			admissible as only wrongful
17			death damages are at issue, not
18			survival damages of her son.
19			
20	25	April 11, 2017 Booking	II- Hearsay,
21		(Inmate Status	Relevance,
22		Document)	FRE 403
23			Δ Proffer- Exception to
24			Hearsay- FRE 802 (6)-
25			Records of a Regularly
26			Conducted activity. Entries
27			were made at or near time of
28			booking for Mr. Breunig and
			can be authenticated by

1			Custodian of Records at San Bernardino if needed.
2			
3			403- Defendants will likely
4			not seek to admit this exhibit in
5			whole or in part unless Ms.
6			Moller denies knowledge of
7			decedent's arrest history.
8			Defendants should be
9			permitted to use exhibit to
10			question Ms. Moller about her
11			knowledge of son's history as
12			it goes to quality of the
13			relationship that was lost.
14			
15			II Response- The document
16			itself is not admissible as it is
17			hearsay and violates 403.
18			However Ms. Moller testifies
19			about her son's history does
20			not make this document
21			admissible as only wrongful
22			death damages are at issue, not
23			survival damages of her son.
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1	26	August 16, 2018	II- Hearsay,	Δ Proffer- Exception to
2		Booking (Original	Relevance,	Hearsay- FRE 802 (6)-
3		Charges Document)	FRE 403	Records of a Regularly
4				Conducted activity. Entries
5				were made at or near time of
6				booking for Mr. Breunig and
7				can be authenticated by
8				Custodian of Records at San
9				Bernardino if needed.
10				403- Defendants will likely
11				not seek to admit this exhibit in
12				whole or in part unless Ms.
13				Moller denies knowledge of
14				decedent's arrest history.
15				Defendants should be
16				permitted to use exhibit to
17				question Ms. Moller about her
18				knowledge of son's history as
19				it goes to quality of the
20				relationship that was lost.
21				II Response- The document
22				itself is not admissible as it is
23				hearsay and violates 403.
24				However Ms. Moller testifies
25				about her son's history does
26				not make this document

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			admissible as only wrongful death damages are at issue, not survival damages of her son.
27	Coroner Report (Autopsy)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
28	Death Certificate		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
29	Birth Certificate		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
30	Hodge Interview (Audio File)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
31	Wrongful Death Damages Video (Video File)	Δ- Relevance, 403	II Proffer-The video depicts Plaintiff with her son and her loss of love, companionship, comfort care, assistance, protection, affection, society,

			<p>and moral support near the time of his death.</p> <p>Δ response- Video is of decedent and unknown child, does not depict Deborah Moller and therefore no relevance to Deborah Moller claim regarding loss of relationship with son</p>
32	Wrongful Death Damages Photographs	Δ- Relevance, FRE 403	<p>Π Proffer-The photographs depict Plaintiff's loss of love, companionship, comfort care, assistance, protection, affection, society, and moral support with her son's passing.</p> <p>Δ response- Defendants do not object to certain photographs or cards coming in if relate to Plaintiff's damages as testified to by Plaintiff. However, Defendants maintain objection to reserve right to object to entirety of this exhibit coming in.</p>

1	33	Photographs of Brett Breunig on scene	Δ- Relevance, FRE 403, already excluded	<p>II Proffer-Page 15 accurately depicts Plaintiff's surgical right foot without showing any other evidence of gruesomeness. Any evidence of gruesomeness claimed by Defendants can be redacted.</p> <p>Δ- Gruesome photographs of crime scene have already been specifically excluded by the Court as not relevant and unduly prejudicial under 403. Photograph 15 clearly shows that Mr. Breunig's other limb is bloody with his foot missing. This is an attempt to get around the Court's order on Motion in Limine #2 to exclude reference to dismemberment by showing a photograph of a dismembered foot and significant blood. If the Court is to consider use of this photo at all it should be cropped in a manner that only shows Mr. Breunig's foot and</p>
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			surgical scar without his missing leg, which Defendant still maintains is unduly prejudicial given the blood and the absence of a witness to testify the foot looked the same pre and post mortem.
35	Complete LLUMC Medical Records, Bret Breunig		Stipulated- This exhibit is not admissible as both parties object to its use. Defendants do not intend to admit exhibit but will be testimony to extent the record was relied upon by Defense toxicologist in evaluating Breunig's tolerance based on drug use history in forming opinions.
36	Complete LLUMC Medical Records, Brett Brenit		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence. Defendants do not intend to admit exhibit but will be testimony to extent the record was relied upon by Defense

			toxicologist in evaluating Breunig's tolerance based on drug use history in forming opinions.
37	Complete Arrowhead Regional Medical Records		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p> <p>Defendants do not intend to admit exhibit but will be testimony to extent the record was relied upon by Defense toxicologist in evaluating Breunig's tolerance based on drug use history in forming opinions.</p>
38	Redlands Police Department File		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p> <p>Δ- Defendants maintain that the entire Redlands investigation should not be admitted as it contains multiple layers of hearsay and other</p>

			information that has been excluded. However, there may be a need to refer to a particular report to refresh recollection or address a dispute at trial in which case it can be addressed with Court and counsel.
39	AMR Ambulance Report August 16, 2021		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
40	GPS Audit		Stipulated- Admissible when witness provides proper context for exhibit
41	GPS Audit Map	Δ- Lacks Foundation, Relevance, FRE 403	II Proffer-With the GPS audit produced by Defendants in discovery and marked as Exhibit 40, this map depicts all of the GPS points identified in the GPS audit. This accurately depicts the route of Defendant Fite based upon the GPS information from her vehicle.

			<p>Δ response- Appears to be a google overhead with data points from GPS audit.</p> <p>However, the data points include places not relevant to this case and are placed in a manner that they are extremely confusing and misleading.</p> <p>Plaintiff does not have a witness to testify as to method and manner that this document was prepared to verify the data points or explain what they depict and at what time to avoid confusion over this document during jury deliberations.</p>
42	County Admin Investigation re: Fite (County 00358-398)		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p>
53	Coroner Investigation		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible</p>

			as both parties object to its admission into evidence.  Defendants do not intend to admit exhibit but will be testimony to extent the record was relied upon by Defense toxicologist in evaluating Breunig's reaction to drugs.
54	Scene Photographs	Δ-FRE 403 to page 54-2	II Proffer- The crime scene tape does not rise to the level of unfair prejudice contemplated in FRE 403. Δ- No objection to the photograph that does not have crime scene tape or markings on ground, other photograph would not depict train track prior to incident and is irrelevant
55	Google Map—location of incident to Redlands Community Hospital 2.8 miles	Δ-Lacks Foundation, Not Authenticate, FRE 403, Hearsay	II Proffer-The map accurately depicts the path from the location where Deputy Fite dropped Decedent off and Redlands Community Hospital. The time can be redacted.

			<p>Δ Response- Map sets forth a drive time of 7 minutes without any support, Drive time is a hearsay statement with no exception.</p>
56	Arrowhead Regional medical records full		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence. Defendants do not intend to admit exhibit but will be testimony to extent the record was relied upon by Defense toxicologist in evaluating Breunig’s tolerance based on drug use history in forming opinions.</p>
67	Google Map—LLUMC aerial map	<p>Δ-Lacks Foundation, Not Authenticate, FRE 403, Hearsay</p>	<p>Π Proffer-The walk time can be redacted.</p> <p>Δ -Response- Map sets forth a walk time in minutes and a route without any support which is a hearsay statement with no exception. No evidence</p>

			that anybody walked this exact route and is therefore not relevant.
68	Google Map-LLUMC	Δ-Lacks Foundation, Not Authenticate, FRE 403, Hearsay	<p>Π Proffer- The walk time can be redacted.</p> <p>Δ -Response- Map sets forth a walk time in minutes and a route without any support which is a hearsay statement with no exception. No evidence that anybody walked this exact route and is therefore not relevant.</p>
69	Mapquest-LLUMC	Δ-Lacks Foundation, Not Authenticate, FRE 403, Hearsay	<p>Π Proffer-The walk time can be redacted.</p> <p>Δ Response- Map sets forth a walk time in minutes and a route without any support which is a hearsay statement with no exception. No evidence that anybody walked this exact route and is therefore not relevant.</p>

70	Mapquest-LLUMC	Δ-Lacks Foundation, Not Authenticate, FRE 403, Hearsay	<p>II Proffer-The walk time can be redacted.</p> <p>Δ Response- Map sets forth a walk time in minutes and a route without any support which is a hearsay statement with no exception. No evidence that anybody walked this exact route and is therefore not relevant.</p>
201	*Transcript of Deputy Fite Belt Recording		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence.</p>
202	Deputy Fite Belt Recording Audio with Transcript Synced		<p>Stipulated- Admissible when witness lays proper context.</p>
203	*Call Intake- Audio, County 0005		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence</p>



1	204	*Call Intake Transcript		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
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5	205	Call Intake Audio with Transcript Synced		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence Plaintiff has included dispatcher Loma Linda Mary Matlean on her witness list. To the extent that Ms. Matlean is called as a witness and is questioned about what she conveyed to Sheriff's dispatch Defendants may request to use this recording to address that testimony.
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22	206	Dispatch A- Audio, County 0006	II- Hearsay, FRE 403	Δ Proffer- only the first 15 seconds of this exhibit are relevant, and Defendant can create an Exhibit 206A that
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1			only includes the relevant
2			portion.
3			As to these 15 seconds:
4			Exception to Hearsay- FRE
5			802 (6)- Records of a
6			Regularly Conducted activity.
7			This is recording of what was
8			communicated by dispatcher to
9			Fite on date of incident,
10			recorded and kept in regular
11			course of business and Fite can
12			testify to same.
13			
14			Non Hearsay- Admissible to
15			establish Fite's knowledge of
16			information conveyed to her
17			which informed her actions.
18			Plaintiff concedes that Deputy
19			Fite can testify as to what she
20			was told. Defendants seek to
21			play these 15 seconds so that
22			the jury can hear the
23			information so that Deputy
24			Fite's credibility is not
25			challenged on this point.
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			<p>403- Document is relevant as it sets forth why Fite was dispatched and what information she had available upon arrival. The recording is 15 seconds, highly relevant and not an undue consumption of time.</p> <p>II Response- As Defendant's proffer states, Defendant Fite can testify to this. Having the audio exhibit admitted into evidence is hearsay and violates FRE 403.</p>
207	Dispatch C- Audio, County 0008	II- Hearsay, FRE 403	<p>Δ- - only the end of the recording is relevant to this incident from 7:53 seconds to the end at 9:16 seconds, and Defendant can create an Exhibit 207A that only includes the relevant portion. As to the portion of the recording from 7:53 to 9:16 seconds:</p>

1			Exception to Hearsay- FRE
2			802 (6)- Records of a
3			Regularly Conducted activity.
4			This is recording of what was
5			communicated by dispatcher to
6			Fite on date of incident,
7			recorded and kept in regular
8			course of business and Fite can
9			testify to same.
10			
11			Non Hearsay- Admissible to
12			establish Fite's knowledge of
13			information conveyed to her
14			which informed her actions.
15			As admitted by Plaintiff,
16			Deputy Fite can testify as to
17			what she heard. The jury
18			should likewise be able to hear
19			that same information,
20			otherwise Deputy Fite's
21			credibility as to what she was
22			told can be challenged.
23			
24			403- Recording is relevant as
25			it sets forth what information
26			the dispatcher conveyed to

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			<p>Deputy Fite about Breunig's criminal history while at Loma Linda. The recording is very brief, will not be an undue consumption of time and is highly relevant.</p> <p>II Response- As Defendant's proffer states, Defendant Fite can testify to this. Having the audio exhibit admitted into evidence is hearsay and violates FRE 403.</p>
208	<p>*Detailed History for Police Inc. # CO212300045, County 00010-0011</p>	<p>II- Irrelevant, Hearsay, FRE 403</p>	<p>Δ Proffer- Exception to Hearsay- FRE 802 (6)- Records of a Regularly Conducted activity. Entries were made by dispatcher at or near the time of incident, kept in regular course of business and Coroner Inv. McCarthy can testify to same.</p>

			<p>403- Document is relevant as it sets forth when the Sheriff's Department Coroner's office was first notified of Mr. Breunig's death as Defendants anticipate Plaintiff will argue Deputy Fite was aware of Mr. Breunig's death even before the Sheriff's Department was notified.</p> <p>II Response-This is a CAD log was created after Decedent had passed. It constitutes hearsay and is inadmissible under FRE 403.</p>
209	*4-11-17 Booking Jacket, County00462-00491	II- Hearsay, Lacks Foundation, FRE 403	<p>Δ Proffer- Exception to Hearsay- FRE 802 (6)- Records of a Regularly Conducted activity. Entries were made at or near time of booking for Mr. Breunig and can be authenticated by Custodian of Records at San Bernardino if needed.</p>

1			403- Defendants will likely
2			not seek to admit this exhibit in
3			whole or in part unless Ms.
4			Moller denies knowledge of
5			decedent's arrest history.
6			Defendants should be
7			permitted to use exhibit to
8			question Ms. Moller about her
9			knowledge of son's history as
10			it goes to quality of the
11			relationship that was lost.
12			Defendants do not intend to
13			admit exhibit for this purpose
14			but will be testimony to extent
15			the record was relied upon by
16			Defense toxicologist in
17			evaluating Breunig's tolerance
18			based on drug use history in
19			forming opinions.
20			
21			II Response- The document
22			itself is not admissible as it is
23			hearsay and violates 403.
24			However Ms. Moller testifies
25			about her son's history does
26			not make this document

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			admissible as only wrongful death damages are at issue, not survival damages of her son.
210	*8-16-21 Booking Jacket, County00494-County00506	II- Hearsay, Lacks Foundation, FRE 403	<p>Δ Proffer- Exception to Hearsay- FRE 802 (6)- Records of a Regularly Conducted activity. Entries were made at or near time of booking for Mr. Breunig and can be authenticated by Custodian of Records at San Bernardino if needed.</p> <p>403- Defendants will likely not seek to admit this exhibit in whole or in part unless Ms. Moller denies knowledge of decedent's arrest history. Defendants should be permitted to use exhibit to question Ms. Moller about her knowledge of son's history as it goes to quality of the relationship that was lost. Defendants do not intend to admit exhibit for this purpose</p>



			<p>but will be testimony to extent the record was relied upon by Defense toxicologist in evaluating Breunig's tolerance based on drug use history in forming opinions.</p> <p>II Response- The document itself is not admissible as it is hearsay and violates 403. However Ms. Moller testifies about her son's history does not make this document admissible as only wrongful death damages are at issue, not survival damages of her son.</p>
211	*Breunig, Bret 2108300524 booking medical, County00508- County00533		<p><b>Stipulated As Not Admissible</b></p> <p>- This exhibit is not admissible as both parties object to its admission into evidence. However, Defendants reserve the right to request to use this exhibit to the extent the Court finds that Plaintiff may offer testimony about Mr. Breunig's</p>

			injuries and alleged inability to ambulate. Defendants dispute relevancy of the medical records for this purpose, but should they be admitted, Defendant should be permitted to counter with contrary records.
212	*8-17-21 Detailed History for Police Inc# LL212290007, County00537-County00539		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence. However, Defendant maintains the CAD report is not hearsay pursuant to FRE 802(6) and Defendants reserve right to request admission depending on testimony offered by Moller and/or medical witnesses regarding Mr. Breunig's conduct before encountering Fite.
213	*8-17-21 Report, County00540-County00555		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible

			as both parties object to its admission into evidence.
214	*Redlands Audio – 42791795 (Witness Lakaya Hodge)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
215	*Transcript of Redlands Audio – 42791795 (Witness Lakaya Hodge)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
216	*Redlands Audio – 43353628 (Witness Kirtius Crosby)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
217	*Transcript of Redlands Audio – 43353628 (Witness Kirtius Crosby)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
218	*Redlands Audio – 43353629 (Deborah Moller)	II- Hearsay, FRE 403	Δ Proffer- Defendants do not intend to request that the entire recording of Ms. Moller interview be entered into evidence. However, they should be able to play several portions of the audio recording

1			for various non hearsay
2			purposes. Notably the only
3			audio objected to by Plaintiff
4			on hearsay grounds are her
5			own statements.
6			FRE 803(5) provides an
7			exception for Recorded
8			Recollection which is
9			applicable to recording,
10			Under FRE 801(2)- not hearsay
11			as a prior statement of an
12			opposing party.
13			403- Ms. Moller's prior
14			statements regarding her
15			relationship with her son closer
16			in time to the incident are
17			clearly relevant.
18			II Response- Defendant has not
19			identified which portions of
20			this audio is admissible, and
21			thus this exhibit is inadmissible
22			under FRE 403.
23			
24	219	*Transcript of Redlands	II- Hearsay,
25		Audio – 43353629	FRE 403
26		(Deborah Moller)	Δ Proffer- Defendant will not
27			seek to admit the transcript in
28			evidence, but may request that

			<p>it be used to aid the jury when audio is played only if they are not permitted to use Exhibit 220 where the audio and transcript are synced.</p> <p>II Response- Defendant has not identified which portions of this audio is admissible, and thus this exhibit is inadmissible under FRE 403. The transcript itself is hearsay to which no exception applies.</p>
220	Audio Recording of Deborah Moller – 43353629 with Synced Transcript	II- Hearsay, FRE 403	<p>Δ Proffer- Defendant intends to use Ms. Moller’s prior statements for appropriate non hearsay purposes and has synced the transcript with the audio to assist the jury.</p> <p>II Response- Defendant has not identified which portions of this audio is admissible, and thus this exhibit is inadmissible under FRE 403. The transcript itself is hearsay to which no exception applies.</p>

221	*Redlands Audio – 44632849 (Witness Robert)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
222	*Transcript of Redlands Audio – 44632849 (Witness Robert)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
223	*Redlands Audio – 44632850 (Witness Kirtius Crosby)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
224	*Transcript of Redlands Audio – 44632850 (Witness Kirtius Crosby)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
225	Redlands Audio – 50072187 (Witness Juan Lievanos)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence. Δ response- Mr. Lievanos is expected to testify and depending on his testimony some of the recording may be admissible under FRE 805(5)-

			Recorded Recollection- but is not admissible otherwise
226	Redlands Audio- 50072188 (Witness Juan Lievanos		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.  Δ response- if portions of the audio recording are admissible, that portion of the transcript can be used to assist the jury but the entire transcript should not be admitted.
227	Redlands Audio- 500072189 (Witness Juan Lievanos		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.  Δ response- Mr. Lievanos is expected to testify and depending on his testimony some of the recording may be admissible under FRE 805(5)- Recorded Recollection- but is not admissible otherwise
228	Transcript of Redlands Audios – 50072187-		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible

1		50072189 (Witness Juan Lievanos)		as both parties object to its admission into evidence.  Δ response- if portions of the audio recording are admissible, that portion of the transcript can be used to assist the jury but the entire transcript should not be admitted.
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9	229	*Redlands Audio – 50441074 (unknown witness)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
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14	230	*Transcript of Redlands Audio – 50441074 (unknown witness)	403	<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
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19	231	*Redlands Audio – 50441077 (Witness Robert Morris)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible as both parties object to its admission into evidence.
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24	232	*Transcript of Redlands Audio – 50441077 (Witness Robert Morris)		<b>Stipulated As Not Admissible</b> - This exhibit is not admissible
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26				
27				



			as both parties object to its admission into evidence.
233	Scene Photo, County 000121		Stipulated- Admissible when witness provides proper context for exhibit.
234	Deputy Fite Route from LLUMC to Cardinal Court (Graphic Illustration per Local Rule 16-3)		Stipulated- Admissible when witness provides proper context for exhibit.
235	Deputy Fite Route from Cardinal Court to Alessandro Rd. (Graphic Illustration per Local Rule 16-3)		Stipulated- Admissible when witness provides proper context for exhibit.

DATED: July 26, 2024

CONLOGUE LAW, LLP

/s/ Kevin S. Conlogue

Kevin S. Conlogue, Esq.  
Ashley M. Conlogue, Esq.  
Attorneys for Plaintiff,  
DEBORAH MOLLER

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2 DATED: July 26, 2024

**LYNBERG & WATKINS, APC**

3  
4  
5 Bv: /s/ Shannon L. Gustafson  
6 **SHANNON L. GUSTAFSON**  
7 **AMY R. MARGOLIES**  
Attorneys for Defendants,  
SAN BERNARDINO COUNTY and  
BREANA FITE

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8  
9 I certify that all parties to this document have consented to its filing and to the  
10 language contained herein and have authorized the undersigned to affix their  
11 electronic signatures.

12 DATED: July 26, 2024

**LYNBERG & WATKINS, APC**

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14  
15 By: /s/ Shannon L. Gustafson  
16 **SHANNON GUSTAFSON**  
17 **AMY MARGOLIES**  
Attorney for Defendants SAN BERNARDINO  
COUNTY, BREANA FITE